

Meeting Minutes

Zoning Board of Adjustment

Tuesday, August 19, 2014
Ankeny City Hall – City Council Chambers
410 W. First Street, Ankeny, Iowa

CALL TO ORDER

The August 19, 2014 regular meeting of the Zoning Board of Adjustment was called to order at 5:00 pm by Chairman M.Ott. Members present: B.Friest, M.Ott, K.Tomlinson. Absent: C.Dissell, N.Sungren. Staff present: E.Bodeker, E.Carstens, J.Gould, E.Jensen, T.Kuhn.

AMENDMENTS TO THE AGENDA

There were no amendments.

MINUTES OF THE JULY 22, 2014 MEETING

Motion by K.Tomlinson to approve the meeting minutes as submitted. Second by B.Friest. Motion carried 3 - 0.

COMMUNICATIONS / CORRESPONDENCE

There were no communications.

M.Ott advised the applicants that with only three member of the Board present, they could request their item be continued to another meeting date, since three votes are required for a variance to be granted.

BUSINESS ITEMS

#14-28 Bresson Construction Inc. dba Remington Homes
519 SW 40th Street
Lot 47, Sienna Falls Plat 1
RE: Rear Yard Setback

Chairman M.Ott opened the public hearing.

The applicant was not present.

Staff Report: J.Gould presented an aerial map identifying the location of the property within the Siena Hills Planned Unit Development and stated that this covered deck was discovered by staff while collecting information for a similar variance request on a nearby lot. The required rear yard setback is 35 feet, an uncovered deck is allowed to encroach into the rear yard up to 12 feet. She explained that in this situation, the building permit applied for with construction of the house included a 13' x 12' deck. It appears as though the deck was originally shown as a covered deck on the permit application but subsequently changed to uncovered. The covered porch constructed extends 5½ feet into the rear yard setback. Staff's position is to recommend approval subject to the applicant securing all necessary permits.

K.Tomlinson asked if the house plans show the deck as covered. J.Gould said that she was told by the applicant that they had always intended for this home to have a covered deck, there apparently was some miscommunication and subsequently, the permit was applied for without the covered deck. J.Gould advised the Board that the building department does not keep the building plans after 6 months.

K.Tomlinson commented that there seems to be a number of decks covered and encroaching into the setback; she asked what the city's position is to remedy the situation. J.Gould responded that there are three covered decks encroaching in this area. E.Carstens stated that

the Director is in the process of reviewing and rewriting the Code and believes this situation may be addressed with that, however it may be a year or so down the road.

B.Friest said that this is a larger encroachment, generally they have been less than 3½ feet.

Motion by K.Tomlinson to close the public hearing and receive and file documents. Second by B.Friest. All voted aye. Motion carried 3 – 0.

M.Ott expressed his disappointment that the applicant or homeowner was not present.

B.Friest asked if once a variance is granted for a covered deck, is there any reason they would not be able to be permitted for a 3-seasons porch. E.Carstens said that once there is a roof, it is considered part of the principle structure whether it is enclosed or not.

K.Tomlinson said she believes the neighborhood looks fine with them and no opposition has been expressed.

Board Action on Filing #14-28 for property at 519 SW 40th Street

Motion by K.Tomlinson that the Board grant a variance to the Siena Hills PUD bulk regulations, to allow a 29½ foot rear yard setback for an existing covered deck at 519 SW 40th Street, subject to the applicant acquiring all necessary building permits. The variance is based on a determination that the resulting structure does not impair adequate supply of air and light, does not increase public danger of fire, or diminish property values and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code. Second by M.Ott. Motion carried 3 – 0.

**#14-29 CSI Homes
 567 SW 40th Street
 Lot 52, Sienna Falls Plat 1
 RE: Rear Yard Setback**

Chairman M.Ott opened the public hearing.

Andy Logan, 1909 NW Ashland Parkway, representing CSI Homes & Development and the homeowner for 567 SW 40th Street said that he is asking for a variance to allow the covered deck.

Staff Report: J.Gould presented an aerial map identifying the location of the property at the corner of SW 40th Street and SW Walnut Street. She explained that this covered deck was also found by staff and the builder and property owner were notified. She explained that the original building application included a 12'x14' covered deck, which was changed on the application to uncovered and subsequently built as covered, most likely with construction of the home. She said that sometime later there was an addition to the deck making the overall size 14'x14'; however only the original 12'x14' deck is covered. The covered deck encroaches into the rear yard setback by 9 feet; the applicant is requesting a 26-foot rear yard setback in lieu of the required 35-foot setback. Staff recommends approval of the variance, subject to the applicant securing all necessary permits.

Jared Goetry, property owner at 567 SW 40th Street, stated that the covered deck and extension to the deck were existing when he purchased the home. He asked that the Board grant the variance.

Motion by B.Friest to close the public hearing and receive and file documents. Second by M.Ott. All voted aye. Motion carried 3 – 0.

K.Tomlinson commented that this request is bothersome because they applied for a covered deck, were told that it did not meet Code and yet it was built anyway. She said she is not in favor of granting these requests each time a covered deck is built without being in compliance. B.Friest said it is difficult to fault the homeowner, however this encroachment is more significant because it is nearly 10 feet.

Mr.Logan stated that he has replaced the individual within the company who was responsible for some of these errors so he is confident it will not happen again at CSI.

K.Tomlinson asked if these are the last ones that staff has identified. J.Gould said they are the last in this area.

Board Action on Filing #14-29 for property at 567 SW 40th Street

Motion by B.Friest that the Board grant a variance to Siena Hills PUD bulk regulations, to allow a 26-foot rear yard setback for an existing covered deck at 567 SW 40th Street, subject to the applicant acquiring all necessary building permits. The variance is based on a determination that the resulting structure does not impair adequate supply of air and light, does not increase public danger of fire, or diminish property values and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code. Second by K.Tomlinson. Motion carried 3 – 0.

**#14-30 Iowa Wireless Services, LLC c/o The Grinnell Group
3305 N Ankeny Blvd.
Lot 1, Briarwood Plat 11
RE: Paving**

Chairman M.Ott opened the public hearing.

Pete McNally, The Grinnell Group, 225 42nd Street, Des Moines, reminded the Board that he was before them a few weeks ago securing variances and a special use permit to allow the construction of a cell tower and did not understand until that meeting that a variance for paving would also be required from the Board. He identified the property as north of Fareway, south of Heartland Tire adding that they tried to place the tower at a location that would minimize the impact on future development. He said that in early negotiations with Mr.Kimberely, owner of the property, there were no development plans for the lot; however, plans are now beginning to crystalize and they want to avoid constructing a concrete drive that would need to be removed with development. He said their plan is to gravel a drive from the paved access roadway to the cell tower site. Mr.McNally submitted a concept plan identifying a building located in the center of the lot proposed as a 3-story building with retail and restaurant on the lower level and luxury residential above. Mr.McNally said that paving a drive to the cell tower is a cost the cell company does not want to incur to install, a cost Mr.Kimberley does not want to incur to remove, and a cost the community doesn't want dumped into a land fill. He explained that once the tower is built, the number of trips will be less than once a month, quarterly for an inspection tech and 3 times a year for weed control. Once the property is developed, as shown on the concept plan, the cell tower lease area will abut the development's paved parking spaces, it's not practical to provide paving now based on how they believe future development will layout especially with drainage issues and drive grade considerations. Mr.McNally said staff's position is approval with a one-year time period, he asked that that be extended because the property owner would like a little more time to pull everything together.

B.Friest asked if the gravel drive will come in right off of N Ankeny Blvd. Mr McNally responded that there is a paved roadway connecting Heartland Tire to the Fareway store. The gravel drive is proposed to come off of that roadway directly to the tower site.

Staff Report: E.Bodeker reported that the request is for a variance to Section 194.01 (6) (B) to waive the requirement for hard surfaced paving for the access drive and parking for a wireless communications tower at 3305 N. Ankeny Boulevard. The property is zoned C-2 and is located north of Fareway and south of Heartland Tire and the Casey's gas station and west of Briarwood Golf Course. She reminded the Board that they approved a Special Use Permit to allow a cell tower in June and at that time also granted a height variance to allow the cell tower to be up to 80 feet tall with a 5 foot lightning rod, and a 30-foot setback variance to allow the tower to be located 10 feet from the rear property line. The leased area is shown to be gravel. There is an existing access drive off of N Ankeny Boulevard that connects the sites to the north to Fareway. Presenting the site plan, E.Bodeker said that the applicant is proposing a 12-foot wide gravel access drive to the lease area and a 14-foot by 43-foot gravel drive/turnaround. She reported that the appellant is requesting a variance from the section of the zoning code which requires paved parking, access drives, and driveways. The applicant is requesting that a gravel access drive and parking be approved until the parcel becomes developed. At the time when the parcel is developed a paved access drive and required parking will be installed. Staff's position is to grant a temporary variance for one year to allow a gravel drive and parking for a wireless communications tower, subject to Site Plan approval by the Plan & Zoning Commission, adding that the site plan and been submitted and reviewed by the Tech committee, and is on its way to the Plan & Zoning Commission.

K.Tomlinson asked if the Board granted the variance for one year, could the applicant come back for an extension.

B.Friest asked if the cell tower site plan has been approved by the Plan & Zoning Commission. E.Bodeker responded that it has not yet gone to the Commission, it has been reviewed by staff at Tech Review. E.Jensen added that the concept plan presented by the applicant, has not been submitted to or reviewed by the City.

In his final comments Mr.McNally said he believes the one year window is a little short adding that they would like 2 to 4 years, they would like a cushion for development. M.Ott asked if they would be amenable to annual staff review for 3 years if there are no issues such as dust. E.Jensen commented that he's not sure staff would have the ability to extend a variance. E.Carstens suggested that the Board could allow a period of time longer than one year.

M.Ott asked about the timeline for construction. Mr. McNally said hopefully before the snow flies.

Motion by K.Tomlinson to close the public hearing and receive and file documents. Second by M.Ott. All voted aye. Motion carried 3 – 0.

B.Friest said that allowing 2 years would seem to be a reasonable time to have a plan in place. M.Ott asked if the variance could be reviewed sooner by the Board if there were problems with dust. E.Jensen responded that that condition could be added, however, this is a unique circumstance in that the gravel drive will not connect to another site and will not be traveled. B.Friest said that the county cell towers have gravel without any issues.

Board Action on Filing #14-30 for property at 3305 N Ankeny Blvd.

Motion by B.Friest that the Board of Adjustment grant a temporary variance until December 31, 2016 to allow a gravel drive and parking for a wireless communications tower, subject to Site Plan approval by the Plan & Zoning Commission. The variance is temporary until a permanent access and parking can be determined with the development of the site. The Board finds the temporary variance is in harmony with the intended spirit and purpose of the Zoning Ordinance. Second by M.Ott. Motion carried 3 – 0.

REPORTS

Renewed Special Use Permits

#13-09 2510 SW State Street – Hy-Vee Inc.

E.Jensen reported that the Special Use Permit renewal for the Outdoor Service Area was approved administratively following staff review and no report of complaints from police, fire and code enforcement.

There being no further business, the meeting adjourned at 5:45 pm.

Submitted by, Trish Kuhn,

Recording Secretary,
Zoning Board of Adjustment